

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JAMES E. DAVIS, ET AL.

PLAINTIFFS

vs.

CAUSE NO. 3:11-CV-093-MPM-SAA

ACA FINANCIAL GUARANTY
CORPORATION, and
JOHN DOES One through Ten

DEFENDANTS

PLAINTIFFS' MOTION TO AMEND CASE MANAGEMENT ORDER

Plaintiffs move to amend the Case Management Order (“CMO”) entered June 20, 2013. In support of this Motion, Plaintiffs state as follows:

INTRODUCTION

1. Plaintiffs served written discovery on Defendant ACA on September 25, 2012. Shortly thereafter, at the Court’s direction, the parties agreed that both sides would only respond to discovery relating to class-action certification. Thus, both sides designated the discovery needed for class certification analysis and understood that the remaining written discovery would be stayed until later informed otherwise by the Court. After six months staying discovery, the Court held a case management conference on June 20, 2013, and simultaneously entered the current CMO which in effect lifted the stay of discovery.

2. Shortly thereafter, Plaintiffs’ counsel contacted ACA’s counsel to discuss the need to move forward with discovery. (See compilation of correspondence between Plaintiff and Defense counsel regarding outstanding discovery attached hereto as Exhibit “A”). Plaintiffs’ counsel expressed the need for the production of documents and responses to the outstanding interrogatories for deposition purposes. Since this discussion, several other communications and discussions have taken place, during such, ACA has consistently stated that it was working on producing the requested

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documents. In fact, enclosed in Exhibit “A” is one of ACA counsel’s, David Clark’s, emails regarding the amendment of the current CMO, ACA’s production of documents and discovery responses, and the availability of certain ACA employees to be deposed. David Clark’s email reads in part:

Jesse,

I think the Magistrate judge will give us whatever we need within reason (as long as we leave three or four months for the judge to handle any dispositive motions). If we don’t know something by Wednesday, let’s take a look at what we need to revise.

We’re looking at our document production and possible ways to speed it up. Also, I believe we have the two people you requested available for deposition in NYC in mid-October, although I don’t know that we will have other documents produced by then.

See September 23, 2013, email from David Clark to Jesse Mitchell enclosed in Exhibit “A”.

3. Despite ACA’s frequent assurances of its compliance with discovery and Plaintiffs request to move discovery forward; on October 7, 2013, ACA reversed its position and asked the Court to again stay all discovery. (See *Id.*)

4. It is now apparent that ACA’s promise, to produce the requested documents and responses, was nothing more than a stall tactic designed to draw Plaintiffs nearer to the discovery and expert designation deadlines. As a result, Plaintiffs now must seek relief from the Court to modify the discovery and expert designation deadlines in a manner that would give Plaintiffs sufficient time to complete discovery and properly designate experts. With the requested amendments, Plaintiffs will complete all needed discovery and expert designations.

FACTUAL BACKGROUND AND REQUESTED RELIEF

5. The current CMO was entered on June 20, 2013. Prior to the entry of the current CMO, the Court entered an Order (Dkt. #81) on December 6, 2012, staying all discovery pending “a decision on the appeal of the July 2012 New York Supreme Court in *Oppenheimer AMT-Free Municipals, et al. v. ACA Financial Guaranty Corp.*, Index No. 653290/11 (N.Y. Sup. Ct. July 2012).” At that time, ACA informed this Court it expected a ruling on its appeal by February of 2013. Thus, the Court in the December 6, 2012, order went on to state that it would hold a telephonic status conference in later

On June 20, 2013, this Court issued the current CMO with the following deadlines:

- Plaintiffs Expert Deadline: 10/28/13
- Defendants Expert Deadline: 11/29/13
- Discovery Deadline: 01/27/14
- Motions Deadline: 02/10/14
- Pretrial Conference: 05/22/14
- Trial: 06/23/14

6. As the Court has suggested, Plaintiffs are requesting the above deadlines in the current CMO be amended as indicated in bold text below. The suggested amendment dates were supplied to Plaintiffs by the Court:

- Plaintiffs Expert Deadline: 10/28/13 – **12/4/13**
- Defendants Expert Deadline: 11/29/13 – **01/10/14**
- Discovery Deadline: 1/27/2014 – **02/27/14**
- Motions Deadline: 2/10/2014 – **03/10/2014**
- Pretrial Conference: 5/22/2014
- Trial: 6/23/2014

7. It is well recognized that control of discovery and discovery deadlines are committed to the sound discretion of the trial court.¹ Plaintiffs have been diligent in working with ACA and the Court, to help move this case along in an efficient manner. However, Plaintiffs' efforts and compliance has now placed Plaintiffs at the mercy of the Court. The recommended changes will not prejudice ACA. In fact, the need for these amendments was caused by ACA's stall tactics. Furthermore, the above suggested dates are almost identical to dates presented to Plaintiffs' counsel by ACA's counsel on October 2, 2013. (See David Clark's email of proposed amendments to the

¹ See *Freeman v. United States*, 556 F.3d 326, 341 (5th Cir. 2009).

8. In addition to this motion, Plaintiffs' are filing a motion to compel discovery responses.

WHEREFORE, Plaintiffs move this Court to amend the CMO entered June 20, 2013, as requested above and requests the Court to waive the requirement to file a memorandum in support of this motion.

RESPECTFULLY SUBMITTED, this the 14th day of October, 2013.

By: /s/ JESSE MITCHELL, III
Jesse Mitchell, III (MS Bar No.103020)
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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

Respectfully Submitted,

/s/ JESSE MITCHELL, III
JESSE MITCHELL, III (MSB 103020)